IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10464 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAKASH MOTILAL THAKKAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10464 of 2002

MR BP GUPTA for Petitioner No. 1

MS NANDINI JOSHI AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 02/04/2003

ORAL JUDGEMENT

1. Heard the ld. counsel for the parties.

2. Ld. AGP has tendered the affidavit in reply on behalf of the detaining authority which is taken on record.

3. By this petition under Article 226 of the Constitution of India-the petitioner detenu has challenged the legality and validity of the order of detention dated 13.6.2002 passed against him by the Commissioner of Police, Surat City, Surat in exercise of the powers conferred on him by section 3(2) of the Gujarat Prevention of Anti Social Activities Act 1985 (hereinafter referred to as the PASA Act) on the ground that the activities of the petitioner is dangerous and threat to the maintenance of public order. The petitioner has been branded as 'bootlegger' within the meaning of section 2(b) of the PASA Act.

4. While recording subjective satisfaction, for passing the detention order, the detaining authority has considered the report of sponsoring authority wherein it is mentioned that the petitioner is regularly indulging in bootlegging activities and committing offences under Bombay Prohibition Act. In the grounds of detention served to the petitioner-detenu it is mentioned that one offence has been registered against the petitioner with Umra Police Station and the same was under investigation on the date of passing of the order of detention. As per the schedule of detention served to the petitioner, the alleged offence was registered with the Umra Police Station vide CR-III-409 of 2002 punishable offences punishable under sections 66(1)B,65-E, 65-A and 81 along with offence punishable under section 66(1) of the Bombay Prohibition Act. According to the facts mentioned in the grounds of detention, total 93 bottles of Indian Made Foreign Liquor was seized by the police inspector.

5. Mr. Gupta has taken me through number of grounds for assailing the order of detention. However, he has concentrated mainly on two grounds. The first ground pressed into service by Mr. Gupta is that this is a case of solitary incident and there were no convincing reasons for the detaining authority for recording subjective satisfaction for passing the order of detention. On perusal of the bunch of papers supplied to the detenu, it transpires that the detaining authority has considered the facts narrated by two witnesses in their statements recorded by the sponsoring authority on 19.5.2002. These statements were verified by the Commissioner of Police, Surat City on 11.6.2002. Even for the sake of argument it is accepted that the petitioner has indulged in the activity of bootlegging and the same would be punishable

under the Bombay Prohibition Act, then also, the behaviour of the petitioner, cannot be said to be against the public order. At the most this activity can be said to be prejudicial to law and order.

6. The petitioner was arrested on 12.5.2002 in respect of the offence registered with the Umra Police Station and the sponsoring machinery must have started preparation to obtain appropriate orders from the detaining authority. So the court is of the view that a harsh order of detention ought not to have been passed in view of the solitary offence registered against the present petitioner. It is true that a person can be detained even if he is found involved in only one case but in such cases, the gravity and sensitivity of the offence committed is relevant. In the present case, it is not even found by the detaining authority that the offence registered against the petitioner is either very serious or sensitive.

7. The second point pressed into service by Mr. Gupta is that the detaining authority had not even cared to apply its mind for reasonable period of time though papers were submitted to the detaining authority on or about 19.5.2002 and till 11.6.2002 the papers were lying with the detaining authority or sponsoring authority were not able to procure the presence of 2 unnamed witnesses so that they can be taken to the detaining authority for verification. On 11.6.2002, their statements were verified and on 13.6.2002, the order of detention has been passed. This does not add any strength to the reasons recorded for arriving at the conclusion that this is a fit case wherein one can be detained under PASA.

8. Mr. Gupta has rightly pointed out that one the co-detenu of the present petitioner had also challenged the legality and validity of the order of detention passed by the Commissioner of Police, Surat City, Surat on the same day and said order of detention has been quashed by this court. So considering the similarity on the points of facts and law both, this petition requires to be allowed. He has also rightly pointed out that both these persons have been detained mechanically though no such harsh steps were not required to be taken.

8. Mr. Gupta has rightly placed upon the decision of this court in the case of Girishbhai Ramjibhai Kahar vs. Commissioner of Police in SCA No.6290 of 2002 decided on 12.8.2002. The ratio of this decision would be squarely applicable to the present case. In the

circumstances the order of detention passed against the petitioner is bad and therefore, the same is required to be quashed and set aside.

9. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 13.6.2002 passed by the Commissioner of Police, Surat City, Surat is hereby quashed and set aside and the detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service.

(C.K.Buch-J)

govindan